

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

CLINTON BROOKS JR.,	)	
	)	
Petitioner,	)	4:16CV3048
	)	
v.	)	
	)	
STATE OF NEBRASKA,	)	MEMORANDUM AND ORDER
	)	
Respondent.	)	
_____	)	

This is a habeas corpus case brought by a person convicted of a state crime. Petitioner has not responded to the motion for summary judgment submitted by Respondent. I now grant the motion concluding that Petitioner has failed to exhaust his claim of ineffective assistance of counsel in state court (filing no. [11 at CM/ECF p. 2-3](#)) and has procedurally defaulted that claim as well (*Id.* at CM/ECF p. 4). Additionally, I find and conclude that the petition is moot as Petitioner is no longer “in custody” as he has been discharged from parole. (*Id.*).

A petitioner cannot appeal an adverse ruling on his petition for writ of habeas corpus under § 2254 unless he is granted a certificate of appealability. [28 U.S.C. § 2253\(c\)\(1\)](#); [28 U.S.C. § 2253\(c\)\(2\)](#); [Fed. R. App. P. 22\(b\)\(1\)](#). The standards for granting certificates of appealability (1) where the district court reaches the merits or (2) where the district court rules on procedural grounds are set forth in [Slack v. McDaniel, 529 U.S. 473, 484-485 \(2000\)](#). I have applied the appropriate standard and I have determined that Petitioner is not entitled to a certificate of appealability.

IT IS ORDERED that:

1. The motion for summary judgment (filing no. [10](#)) is granted and the petition (filing no. [1](#)) is denied with prejudice.

2. No certificate of appealability will be issued.
3. Judgment will be entered by separate document.

DATED this 24<sup>th</sup> day of August, 2016.

BY THE COURT:

*s/ Richard G. Kopf*  
Senior United States District Judge